

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

---

JACOLBY WALLACE, a/k/a Jocolby Wallace,

Plaintiff,

v.

9:13-CV-1208  
(GTS/CFH)

C.O. FISHER, Watertown Corr. Facility,

Defendant.

---

APPEARANCES:

OF COUNSEL:

JACOLBY WALLACE, 12-B-0802

Plaintiff, *Pro Se*

Mid-State Correctional Facility

P.O. Box 2500

Marcy, New York 13403

HON. ERIC T. SCHNEIDERMAN

Attorney General for the State of New York

Counsel for Defendant

The Capitol

Albany, New York 12224

CATHY Y. SHEEHAN, ESQ.

Assistant Attorney General

GLENN T. SUDDABY, United States District Judge

**DECISION and ORDER**

Currently before the Court, in this *pro se* prisoner civil rights action filed by Jocolby Wallace (“Plaintiff”) against the above-captioned New York State correctional officer (“Defendant”) asserting claims of excessive force and retaliation, are (1) Defendant’s motion to dismiss Plaintiff’s Amended Complaint for failure to state a claim, and (2) United States Magistrate Judge Christian F. Hummel’s Report-Recommendation recommending that Defendant’s motion be denied. (Dkt. Nos. 23, 28.) Neither of the parties has filed an objection

to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.)

When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a “clear error” review, “the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Id.*: *see also Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at \*1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) (“I am permitted to adopt those sections of [a magistrate judge’s] report to which no specific objection is made, so long as those sections are not facially erroneous.”) (internal quotation marks omitted).

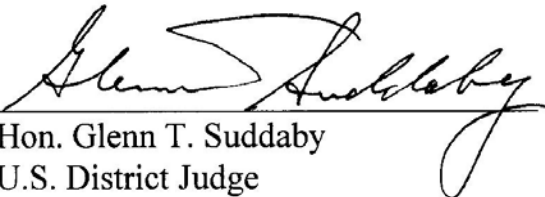
Here, based upon a careful review of this matter, the Court can find no clear error with Magistrate Judge Hummel’s Report-Recommendation. (Dkt. No. 5.) Magistrate Judge Hummel employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. (*Id.*) As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons stated therein.

**ACCORDINGLY**, it is

**ORDERED** that Magistrate Judge Hummel’s Report-Recommendation (Dkt. No. 28) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

**ORDERED** that Defendant’s motion to dismiss (Dkt. No. 23) is **DENIED.**

Dated: January 5 , 2015  
Syracuse, New York

  
Hon. Glenn T. Suddaby  
U.S. District Judge